

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-CV-61116-RAR

LAZAO PENA AND ROGER JAIME,

Plaintiffs,

v.

BEST WHOLESALE GROCERS, LLC,

Defendant.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

THIS CAUSE comes before the Court on Plaintiffs Lazao Pena and Roger Jaime's Motion for Default Final Judgment ("Motion"), [ECF No. 8], filed on August 4, 2023. After Defendant failed to file a response to Plaintiffs' Complaint, [ECF No. 1], Plaintiffs filed a Motion for Clerk's Entry of Default, [ECF No. 5], which the Clerk entered on July 24, 2023, [ECF No. 6]. The Court then entered an Order to Show Cause, requiring that by July 28, 2023, Defendant file a response to Plaintiffs' Complaint. OSC [ECF No. 7] ¶ 1. The Court further ordered that if Defendant failed to file a response to the Complaint, Plaintiffs would file a Motion for Final Default Judgment by August 4, 2023. *Id.* ¶ 2. Defendant has failed to respond to the Complaint or the Order to Show Cause, so Plaintiffs' Motion for Final Default Judgment is presently before the Court.

BACKGROUND

Plaintiffs' Complaint alleges violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* *See generally* Compl. Plaintiff Pena alleges that for 90 days beginning in October 2022, Defendant failed to pay full and proper overtime wages. *See* Aff. of Lazao Pena ("Pena Aff."), [ECF No. 8-2] ¶¶ 3–6. Plaintiff Jaime alleges he was not paid full and proper

overtime wages from July 18, 2022, through December 29, 2022. Aff. of Roger Jaime (“Jaime Aff.”), [ECF No. 8-1] ¶¶ 3–6. Plaintiffs’ Motion seeks entry of a final default judgment against Defendant. Plaintiff Pena requests that the Court award damages in the sum of \$1,920.00 for unpaid overtime wages and \$1,920.00 for liquidated damages. Mot. at 3–4. Plaintiff Jaime seeks \$2,665.00 for unpaid overtime wages and \$2,665.00 for liquidated damages. *Id.*

LEGAL STANDARD

A party may apply to the court for a default judgment when the defendant fails to timely respond to a pleading. FED. R. CIV. P. 55(b)(2). “A defendant, by his default, admits the plaintiff’s well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established.” *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) (internal quotation marks omitted) (quoting *Nishimatsu Const. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1205 (5th Cir. 1975)). However, conclusions of law are to be determined by the court. *See Mierzwicki v. CAB Asset Mgmt., LLC*, No. 14-61998, 2014 WL 12488533, at *1 (S.D. Fla. Dec. 30, 2014). Therefore, a court may enter a default judgment only if there is a “sufficient basis to state a claim.” *Id.*

Once a plaintiff has established a sufficient basis for liability, the Court must conduct an inquiry to determine the appropriate damages. *PetMed Express, Inc. v. MedPets.Com, Inc.*, 336 F. Supp. 2d 1213, 1217 (S.D. Fla. 2004). A court may determine damages without holding a hearing “where all essential evidence is already of record.” *SEC v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005); *see also Safari Programs, Inc. v. CollectA Int’l Ltd.*, 686 F. App’x 737, 746 (11th Cir. 2017) (stating evidentiary hearings are not required when “any additional evidence would be truly unnecessary to a fully informed determination of damages” (citation omitted)).

ANALYSIS

A. FLSA Liability

To state a claim for unpaid overtime wages under the FLSA, 29 U.S.C. § 207, a plaintiff must allege (1) he or she was employed by an employer covered under the FLSA; (2) he or she was engaged in commerce, or the employer was engaged in commerce; and (3) the employer failed to pay the required overtime compensation. *Molina v. SMI Sec. Mgmt., Inc.*, No. 11-24245, 2013 WL 12092072, at *2 (S.D. Fla. July 15, 2013). Under the FLSA, an “[e]mployer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee.” 29 U.S.C. § 203(d). “[T]he FLSA obligates employers to compensate employees for hours in excess of 40 per week at a rate of 1 ½ times the employees’ regular wages.” *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 147 (2012). The FLSA exempts employees working in an administrative capacity from this requirement. *See* 29 U.S.C. § 213(a); *Friedman v. S. Fla. Psychiatric Assocs., Inc.*, 139 F. App’x 183, 185 (11th Cir. 2005). However, “[o]ne of the requirements for exempt status is that the employee be paid on a salary basis, which requires the employee’s compensation not be ‘subject to reduction because of variations in the quality or quantity of the work performed.’” *Id.* (emphasis omitted) (quoting 29 C.F.R. § 541.118(a)).

An employer who violates § 207 of the FLSA is liable to the employee in the amount of their unpaid overtime compensation *and* an additional equal amount as liquidated damages. 29 U.S.C. § 216(b). “[T]he law is well settled that a prevailing plaintiff under [§ 207] is entitled to a mandatory award of liquidated damages unless the district court explicitly finds that the defendant acted in good faith in violating the [FLSA].” *Miller v. Paradise of Port Richey, Inc.*, 75 F. Supp. 2d 1342, 1344 (M.D. Fla. 1999) (citing *Spires v. Ben Hill Cnty.*, 980 F.2d 683 (11th Cir. 1993)).

Here, taking Plaintiffs' well-pleaded allegations as true, the Court finds that Plaintiffs are entitled to unpaid overtime wages. Plaintiffs allege they were employed by Defendant during the period of their claims. *See* Pena Aff. ¶ 3; Jaime Aff. ¶ 3. Additionally, Plaintiffs allege Defendant engaged in commerce during the course of Plaintiffs' employment periods. Compl. ¶¶ 19–20. Finally, Plaintiffs allege entitlement to damages. Plaintiff Pena claims damages in the sum of \$1,920.00 for unpaid overtime wages and \$1,920.00 for liquidated damages. Mot. at 3–4. Plaintiff Jaime seeks \$2,665.00 for unpaid overtime wages and \$2,665 for liquidated damages. *Id.*

B. Damages

Plaintiffs have provided affidavits, based on personal knowledge, indicating that they were employed by Defendant during the periods of their claims. *See* Pena Aff. ¶ 3; Jaime Aff. ¶ 3. Plaintiffs claim they regularly worked overtime hours but were not compensated appropriately. Pena Aff. ¶ 6; Jaime Aff. ¶ 6. The Court is satisfied Plaintiffs' Affidavits sufficiently establish that Plaintiff Pena's damages are \$1,920.00 and Plaintiff Jaime's damages are \$2,665.00.

With respect to liquidated damages, an employer bears the burden of demonstrating that liquidated damages are not warranted. *See* 29 U.S.C. § 260. Given their default, Defendant has not shown in any way that liquidated damages are not warranted. Accordingly, Plaintiffs are entitled to \$1,920.00 and \$2,665.00 in liquidated damages, respectively.

Plaintiffs also seek attorney's fees and costs totaling \$2,137.00. Plaintiffs' counsel has provided an affidavit accounting for her time spent on this case. Aff. of Juliana Gonzalez, [ECF No. 8-3]. Plaintiffs' counsel requests attorneys' fees for 4.2 hours spent on this matter at an hourly rate of \$400.00, totaling \$1,680.00. *Id.* ¶ 13. Plaintiffs' counsel also requests costs for the court filing fee in the amount of \$402.00 for filing the Complaint and service of process fees in the amount of \$55.00. *Id.* ¶ 14. The Court finds that the request for attorney's fees is appropriate and

not excessive after careful review of the hourly rate and the time expended in this matter. *See* 29 U.S.C. § 216(b) (stating that in an action to recover for violations of section 207, “[t]he court ... shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by the defendant, and costs of the action.”).

CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Plaintiffs’ Motion, [ECF No. 8], is **GRANTED**. Default Final Judgment will be entered by separate order.

DONE AND ORDERED in Miami, Florida, this 9th day of August, 2023.

A handwritten signature in black ink, appearing to read "Rodolfo A. Ruiz II", is written over a horizontal line.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE